

Exhibit A-1

Documents Considered

Legal Documents

- Letter from Luisa Bonachea, Counsel for RiseandShine Corp. (“Rise Brewing”) to Paula Lee, Counsel for PepsiCo Inc. (“Pepsico”), dated January 11, 2021.
- Letter from Luisa Bonachea, Counsel for RiseandShine Corp. (“Rise Brewing”) to Paul Lee, Counsel for PepsiCo Inc. (“Pepsico”), dated March 16, 2021.
- Letter from Luisa Bonachea, Counsel for RiseandShine Corp. (“Rise Brewing”) to Paul Lee, Counsel for PepsiCo Inc. (“Pepsico”), dated March 30, 2021.
- Letter from Luisa Bonachea, Counsel for RiseandShine Corp. (“Rise Brewing”) to Paul Lee, Counsel for PepsiCo Inc. (“Pepsico”), dated April 12, 2021.
- Letter from Paul Lee, Counsel for PepsiCo Inc. (“Pepsico”) to Luisa Bonachea, Counsel for RiseandShine Corp. (“Rise Brewing”), dated January 26, 2021.
- Plaintiff RiseandShine Corporation’s Opposed Motion for Preliminary Injunction, RiseandShine Corporation, and Rise Brewing v. PepsiCo Inc., *RiseandShine Corporation d/b/a Rise Brewing*, United States District Court, Northern District of Illinois, Case No. 1:21-cv-03198 (LGS), dated June 29, 2021.
- Plaintiff’s Memorandum of Law in Support in Support of Its Opposed Motion for Preliminary Injunction. RiseandShine Corporation, and Rise Brewing v. PepsiCo Inc., *RiseandShine Corporation d/b/a Rise Brewing*, United States District Court, Northern District of Illinois, Case No. 1:21-cv-03198 (LGS), dated June 29, 2021.
- Request for Status Conference: RiseandShine Corp. d/b/a Rise Brewing v PepsiCo Inc. RiseandShine Corporation, and Rise Brewing v. PepsiCo Inc., *RiseandShine Corporation d/b/a Rise Brewing*, United States District Court, Northern District of Illinois, Case No. 1:21-cv-03198 (LGS), dated July 26, 2021.
- Declaration of Corey Guidi, RiseandShine Corporation, and Rise Brewing v. PepsiCo Inc., *RiseandShine Corporation d/b/a Rise Brewing*, United States District Court, Northern District of Illinois, Case No. 1:21-cv-03198 (LGS), dated June 29, 2021.
- Declaration of Grant Gyesky, RiseandShine Corporation, and Rise Brewing v. PepsiCo Inc., *RiseandShine Corporation d/b/a Rise Brewing*, United States District Court, Northern District of Illinois, Case No. 1:21-cv-03198 (LGS), dated June 29, 2021.
- Declaration of Melissa Kalimov, RiseandShine Corporation, and Rise Brewing v. PepsiCo Inc., *RiseandShine Corporation d/b/a Rise Brewing*, United States District Court, Northern District of Illinois, Case No. 1:21-cv-03198 (LGS), dated June 29, 2021.
- Declaration of Nia Kaye, RiseandShine Corporation, and Rise Brewing v. PepsiCo Inc., *RiseandShine Corporation d/b/a Rise Brewing*, United States District Court, Northern District of Illinois, Case No. 1:21-cv-03198 (LGS), dated June 29, 2021.

- Declaration of Jarrett McGovern, RiseandShine Corporation, and Rise Brewing v. PepsiCo Inc., *RiseandShine Corporation d/b/a Rise Brewing*, United States District Court, Northern District of Illinois, Case No. 1:21-cv-03198 (LGS), dated June 29, 2021.
- Declaration of Rachel Ratliff, RiseandShine Corporation, and Rise Brewing v. PepsiCo Inc., *RiseandShine Corporation d/b/a Rise Brewing*, United States District Court, Northern District of Illinois, Case No. 1:21-cv-03198 (LGS), dated June 29, 2021.
- Declaration of Emily Welch, RiseandShine Corporation, and Rise Brewing v. PepsiCo Inc., *RiseandShine Corporation d/b/a Rise Brewing*, United States District Court, Northern District of Illinois, Case No. 1:21-cv-03198 (LGS), dated June 29, 2021.
- First Amended Complaint, RiseandShine Corporation, and Rise Brewing v. PepsiCo Inc., *RiseandShine Corporation d/b/a Rise Brewing*, United States District Court, Southern District of New York, Case No. 1:21-cv-03198 (LGS), dated July 26, 2021.
- Plaintiff's Memorandum of Law in Support of Its Motion for Preliminary Injunction RiseandShine Corporation, and Rise Brewing, vs. PepsiCo, Inc., *RiseandShine Corporation d/b/a Rise Brewing*, United States District Court, Southern District of New York, Case No. 1:21-cv-03198 (LGS), dated July 26, 2021.

Articles and Book Chapters

- Barber, William G. 2012, "The Universe," pp. 27-49 in *Trademark and Deceptive Advertising Surveys: Law, Science, and Design*, edited by Shari S. Diamond and Jerre B. Swann. American Bar Association, Section of Intellectual Property Law.
- Diamond, Shari S. 2011. "Reference Guide on Survey Research," pp. 359-423 in the *Reference Manual on Scientific Evidence*, Committee on the Development of the Third Edition of the Reference Manual on Scientific Evidence; Federal Judicial Center; National Research Council.
- Federal Judicial Center. 2004. *Manual for Complex Litigation, Fourth Edition*, §11.493, pp. 102-104.
- Swann, Jerre B. 2012. "Likelihood of Confusion." pp.53-78 in *Trademark and Deceptive Advertising Surveys: Law, Science, and Design*, edited by Shari S. Diamond and Jerre B. Swann. American Bar Association, Section of Intellectual Property Law.
- Isaacson, Dr. Bruce and Dr. Keith A. Botner. 2021. "When to Conduct an Eveready Survey: The Importance of Aided Awareness." *The Trademark Reporter* 111(3):693-711.
- Poret, Hal. 2019. "An Empirical Assessment of the Eveready Survey's Ability to Detect Significant Confusion in Cases of Senior Marks That Are not Top-of-Mind." *The Trademark Reporter* 109(6):935-954.

- Tourangeau, Roger and Shari S. Diamond. 2012. “Internet Surveys for Evaluating Trademark Infringement and Deceptive Advertising.” pp. 287-306 in *Trademark and Deceptive Advertising Surveys: Law, Science, and Design*, edited by Shari S. Diamond and Jerre B. Swann. American Bar Association, Section of Intellectual Property Law.

Websites

- <https://contact.pepsico.com/mtn dewrise/product-locator>
- “RISE Brewing Co.” *RISE Brewing Co.* (<https://risebrewingco.com/>).
- “Store Locator.” *RISE Brewing Co.* (<https://risebrewingco.com/pages/store-locator>).
- “RISE Brewing Co.” *Amazon: RISE Brewing Co.* (https://www.amazon.com/stores/RISE+Nitro+Brewing+Co./page/ED22F638-B51A-47F2-9F09-52B6A6EB689B?ref_=ast_bln).
- “Google reCAPTCHA.” (<https://www.google.com/recaptcha/intro/v3.html>).
- https://www.mountaindewrise.com/?gclid=EAIaIQobChMIItLqR1KLj8AIVF_bjBx1jawCVEAAYASAAEgJLzvD_BwE
- PepsiCo. 2021. “MTN DEW RISE ENERGY and LeBron James Unveil First-Ever Ad Campaign.” *PR Newswire*, May 13. (<https://www.prnewswire.com/news-releases/mtn-dew-rise-energy-and-lebron-james-unveil-first-ever-ad-campaign-301290706.html>).
- <https://www.statista.com/study/10629/non-alcoholic-beverages-and-soft-drinks-in-the-united-states-statista-dossier/>
- <https://www.bevindustry.com/>
- <https://www.target.com/>
- <https://www.walmart.com/cp/beverages/976782>

Other Documents

- Dynata. 2018. “Panel Quality: Our Values- Answers to ESOMAR’s 28 Questions.”
- Heckman, M.A., Sherry, K., and Gonzalez de Mejia, E. 2010. “Energy Drinks: An Assessment of Their Market Size, Consumer Demographics, Ingredient Profile, Functionality, and Regulations in the United States.” *Comprehensive Reviews in Food Science and Food Safety*. Vol. 9.